

**AGREEMENT TO AMEND POST CLOSING COVENANTS AND
MODIFICATION OF GRANT DEED**

This AGREEMENT TO AMEND POST CLOSING COVENANTS AND MODIFICATION OF GRANT DEED (this "**Agreement**"), dated for reference purposes as 12/19, 2016 ("**Reference Date**"), is made by and between the STATE OF CALIFORNIA, acting by and through the Director of the DEPARTMENT OF GENERAL SERVICES ("**State**"), and the Housing Authority of the City of Santa Clara, a public body, corporate and politic ("**Authority**"), with reference to the following:

RECITALS

A. State and Authority's predecessor-in-interest entered into that certain Purchase and Sale Agreement dated July 5, 2005, as amended by that certain First Amendment to Purchase and Sale Agreement dated December 13, 2011 (collectively the "**Purchase Agreement**"), related to certain real property (the "**Seniors' Property**"), as depicted and more particularly described therein. All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

B. In accordance with the terms of the Purchase Agreement, the Seniors' Property was to be developed for approximately 165 units of affordable housing for low or moderate-income housing for senior citizens (the "**Seniors' Project**").

C. Upon receiving entitlements from the City of Santa Clara ("**City**") to develop the Seniors' Project, and in accordance with the terms of the Purchase Agreement, State conveyed the Seniors' Property to Authority pursuant to that certain Grant Deed dated as of December 21, 2011, and recorded in the Official Records of the Santa Clara County Recorder on January 5, 2012, as Document No. 21485774 (the "**Grant Deed**").

D. The Seniors' Property was conveyed to the Authority by the State as surplus property pursuant to the provisions of Chapter 631 of the Statutes of 2002, Section 1, and in accordance with California Government Code § 11011.1 et seq.

E. The Purchase Price of the Seniors' Property was a discounted value from market value in order to provide for the affordable housing for the PD Site in accordance with California Government Code Section § 11011.1 et seq.

F. As required by Government Code § 11011.1 et seq., the Purchase Agreement and the Grant Deed contained certain post-closing covenants to ensure, among other things, that the Seniors' Project was developed on the Seniors' Property as intended (the "**Post-Closing Covenants**"). The Post Closing Covenants survived the Close of Escrow.

G. Authority now desires to amend the Post-Closing Covenants in order to proceed with a proposed project that is different than the Seniors' Project. The Authority currently intends to proceed with a master planned community project on the Seniors' Property that is expected to include an open space component of no less than one (1) acre

V.12.15.2016 1

(the "**Open Space Element**"), residential units at market rate (the "**Market-Rate Housing Element**") and a minimum of 165 affordable multifamily units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors (the "**Affordable Housing Element**"). The Affordable Housing Element, Market Rate-Housing Element and the Open Space Element are collectively referred to herein as the "**Proposed Master Development**".

H. The Proposed Master Development shall be subject to review and approval by the City pursuant to its zoning, planning, building, subdivision and environmental oversight. Any requisite City approvals of this Agreement shall not be deemed approval of the Proposed Master Development.

I. This Agreement and the amendments contemplated herein to the Post-Closing Covenants are authorized by the provisions of Chapter 649 of the Statutes of 2016 (the "**Authorizing Legislation**").

J. In accordance with the Authorizing Legislation, and as a condition to State entering into this Agreement, the Authority shall pay the State the sum of FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00), as consideration for State agreeing to amend the Post-Closing Covenants to allow the Authority to proceed with the Proposed Master Development instead of the Seniors' Project (the "**Consideration**"), as more specifically set forth below in this Agreement. The amount of the Consideration represents the difference between the discounted price paid by the Authority for the Seniors' Property in order to develop the Seniors' Project pursuant to the Purchase Agreement, and the fair market value for the Seniors' Property based upon the Authority developing the Proposed Master Development on the Seniors' Property.

K. In accordance with the Authorizing Legislation, and as a condition to State entering into this Agreement, the City shall be solely responsible for compliance with the California Environmental Quality Act ("**CEQA**").

L. In accordance with the Authorizing Legislation, and as a condition to State entering into this Agreement, the City shall indemnify, defend, and hold harmless the State from any and all claims, damages, or liabilities arising out of, in connection with, or directly or indirectly resulting from this Agreement, as more specifically set forth below in this Agreement.

M. The parties now desire to amend the Post-Closing Covenants to allow the development of the Proposed Master Development on the Seniors' Property.

N. To the extent permitted by law, the parties hereto agree that California Government Code § 11011.1 et seq., in effect as of the Effective Date of the Purchase Agreement shall remain operative.

NOW THEREFORE, in consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants contained in this Agreement, the parties agree as follows:

AGREEMENT

1. Effect of this Agreement. Except as expressly provided otherwise in this Agreement and the attachments to this Agreement, the Post-Closing Covenants shall remain in full force and effect, enforceable in accordance with their terms, without diminution or waiver of any kind of any right or remedy of the parties hereto.

2. Amendments to Post-Closing Covenants in the Purchase Agreement.

- a. Recital D of the Purchase Agreement is hereby amended as follows:

The term "**Seniors' Project**" is deleted and replaced with the defined term "**Proposed Master Development**". The defined term "**Proposed Master Development**" shall mean "The Seniors' Property is currently expected to be developed for an open space component of no less than one (1) acre (the "**Open Space Element**"), residential units at market rate (the "**Market-Rate Housing Element**") and a minimum of 165 affordable multifamily units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors (the "**Affordable Housing Element**") by an entity selected by the Authority ("**Seniors' Developer**"). The Affordable Housing Element, Market Rate-Housing Element and the Open Space Element are collectively referred to herein as the "**Proposed Master Development**". Notwithstanding the foregoing, the Authority reserves the right to modify the Proposed Master Development as herein described in compliance with the terms of this Agreement so long as the modified development plan includes not fewer than 165 affordable units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors, and no less than one (1) acre of open space. Any modification to the Proposed Master Development must comply with all applicable laws, including, but not limited to, Government Code § 11011.1 et seq., and the provisions of Chapter 649 of the Statutes of 2016. All references in the Post Closing Covenants to "**Seniors' Project**" shall be amended to mean "**Proposed Master Development**" as amended by this Agreement."

- b. Subsection 2.1(b) of the Purchase Agreement entitled Purchase Price is deleted in its entirety and replaced by the following:

"(b) To ensure, among other things, that the Affordable Housing Element of the Proposed Master Development is constructed on the Seniors' Property as intended there shall be an agreement which contains covenants, conditions and restrictions by and between the Authority and the Seniors' Developer (the "**Affordability Covenants**") to be recorded against the portion of the Seniors' Property to be developed with the Affordable Housing Element at the time of transfer of the Seniors' Property, or any portion thereof, from the Authority to the Seniors' Developer.

- c. Subsection 2.1(d) of the Purchase Agreement entitled Purchase Price is deleted in its entirety.
- d. Revised Affordability Covenants. The Affordability Covenants are hereby deleted and replaced with the Affordability Covenants attached hereto as Exhibit A.

3. Amendments to Post-Closing Covenants in the Grant Deed. In accordance with the Authorizing Legislation and pursuant to the terms of this Agreement, the State shall record the Modification of Grant Deed in substantially the same form attached hereto as Exhibit B (the "**Modification of Grant Deed**"), the purpose of which is to amend the Grant Deed to allow the Authority to proceed with the Proposed Master Development on the Seniors' Property.

4. Payment of Consideration. In accordance with the Authorizing Legislation, and as a condition to State entering into this Agreement, the Authority agrees to pay the State the sum of FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00), as consideration for State agreeing to amend the Post-Closing Covenants to allow the Authority to proceed with the Proposed Master Development instead of the Seniors' Project (the "**Consideration**"). On or before December 30, 2016, Authority shall deposit the Consideration with Escrow Holder (as defined in Section 5 below). State and Authority acknowledge and agree that the amount of the Consideration represents the difference between the discounted price paid by the Authority for the Seniors' Property in order to develop the Seniors' Project pursuant to the Purchase Agreement, and the fair market value for the Seniors' Property based upon the Authority developing the Proposed Master Development on the Seniors' Property with up to 50% of the residential units at market rate.

- a. Modification of Proposed Master Development. In the event the Authority modifies the Proposed Master Development after the Reference Date such that the Market Rate Housing Element exceeds fifty percent (50%) of the total number of residential units in the resulting project, Authority shall, within thirty (30) calendar days after final approval of the revised Proposed Master Development by the City, pay the State additional compensation (the "**Additional Consideration**") equal to an amount determined by multiplying the percentage of the total number of all residential units at market rate that exceeds fifty percent (50%) of the total number of all residential units by FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00) [For example, if the total number of residential units at market rate in the revised Proposed Master Development is sixty percent (60%) of the total number of residential units, then the Authority would pay ten percent (10%) of FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00) which equals FOUR HUNDRED FIVE THOUSAND AND NO/100THS DOLLARS (\$405,000.00)]. In the event the final approved Proposed Master Development includes a Market Rate Housing Element with less

than fifty percent (50%) of residential units at market rate, the Authority shall not be entitled to any refund of previously paid Consideration.

5. Escrow.

- a. Opening of Escrow. No later than two (2) business days following Authority's execution of this Agreement, Authority shall open escrow ("**Escrow**") with First American Title Insurance Company, 1737 N 1st St Ste 500 San Jose, CA 95112 ("**Escrow Holder**"). Buyer and State agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.
- b. Close of Escrow. For the purpose of this Agreement, the "**Close of Escrow**" shall be defined as the date that the Modification of Grant Deed (as defined in Section 3, above) is recorded in the Official Records of the County of Santa Clara. The Close of Escrow shall, unless such time is extended by mutual agreement by State and Authority, occur no later than five (5) business days following Authority's delivery of the Consideration to Escrow Holder (the "**Closing Date**").
- c. Costs and Expenses. The expenses and fees of Escrow incurred by Escrow Holder, including those associated with recordation of the documents necessary to effectuate this Agreement, shall be borne by Authority. Authority shall pay all title insurance fees.

6. Indemnification. In accordance with the Authorizing Legislation, and as a condition to State entering into this Agreement, the City shall indemnify, defend, and hold harmless the State from any and all claims, damages, or liabilities arising out of, in connection with, or directly or indirectly resulting from this Agreement and/or the exercise of the rights authorized by the Authorizing Legislation by the State, City, Authority, and any subsequent purchaser or transferee of all or any portion of the Seniors' Property, as more specifically set forth below in this Agreement. In any action arising out of, in connection with, or directly or indirectly resulting from this Agreement and/or the exercise of the rights authorized by the Authorizing Legislation, the State shall select counsel to defend State.

7. Partial Releases and Other Documentation. State agrees to provide partial releases or other documentation necessary to release portions of the Seniors' Property that will be developed as the Market-Rate Housing Element from restrictive covenants contained in the Modification of Grant Deed following approval and expiration of any appeal periods of a large lot map approved by the City of Santa Clara that delineates the Market-Rate Housing Element from the Affordable Housing Element and the Open Space Element.

8. Miscellaneous.

- a. Calculation of Time. Under this Agreement, when the day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term "holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.
- b. Time of Essence. Time is of the essence of this Agreement and each and every provision hereof.
- c. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between State and Authority.
- d. Further Action. Each party hereto shall, before the Close of Escrow, duly execute and deliver such papers, documents and instruments and perform all acts reasonably necessary or proper to carry out and effectuate the terms of this Agreement.
- e. Counterparts. This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one instrument after each party has signed such a counterpart.
- f. Multiple Originals. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original.

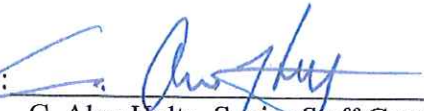
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[Signatures begin on following page.]

"State"
STATE OF CALIFORNIA
Department of General Services
Real Estate Services Division

By: 
Jim Martone, Chief
Asset Management Branch
Department of General Services

APPROVED AS TO FORM:

By: 
C. Alex Holtz, Senior Staff Counsel
Office of Legal Services
Department of General Services

[Signatures continue on following page.]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS
COUNTY OF Yolo)

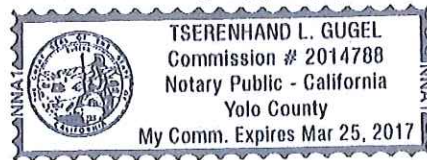
On Dec 23, 2016 before me, Tserenhand L. Gugel, Notary Public, personally appeared
Jim Martone

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tserenhand L. Gugel



This area for official notarial seal.

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER(S) TITLE(S)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

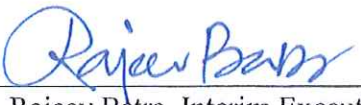
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____


NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____


"Authority"
SANTA CLARA HOUSING AUTHORITY
a public body, corporate and politic,
organized and existing in the County of Santa Clara,
under and by virtue of the laws of the State of California

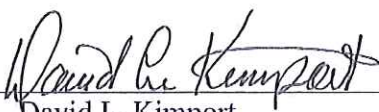
By: 
Rajeev Batra, Interim Executive Director
Housing Authority

ATTEST

By: 
for Rod Diridon, Jr., Secretary
Housing Authority

APPROVED AS TO FORM:

By: 
Richard E. Nosky, Jr., General Counsel
Housing Authority

By: 
David L. Kimport
NOSSAMAN LLP
Authority Special Counsel

California All-Purpose Acknowledgment

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

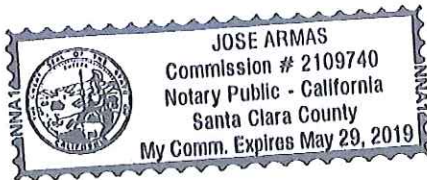
COUNTY OF SANTA CLARA

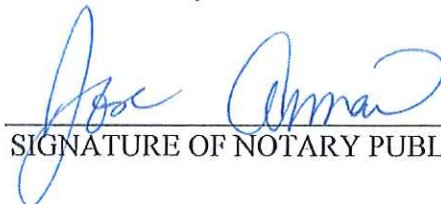
} ss

On December 20, 2016, before me, Jose Armas, a Notary Public, personally appeared Rajeev Batra who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Agreement to Amend Post Closing Covenants and Modification of Grant Deed
State of California

EXHIBIT A

FORM OF REVISED AFFORDABILITY COVENANTS

[Behind this page.]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

HOUSING AUTHORITY OF
THE CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

AGREEMENT CONTAINING COVENANTS

'THIS AGREEMENT' CONTAINING COVENANTS (this "**Agreement**") is dated as of _____, by and between _____ ("**Developer**"), and the HOUSING AUTHORITY OF THE CITY OF SANTA CLARA, a public body, corporate and politic ("**Authority**").

WHEREAS, Developer is the owner of that certain real property (the "**Property**") located in the City of Santa Clara more particularly described in Exhibit A which is attached hereto and incorporated herein by this reference; and

WHEREAS, for the purpose of providing for not less than 165 units of affordable housing for extremely low, very low, or low or moderate income, which will be age-restricted to seniors (the "**Senior Low and Moderate Income Households**"), the Developer and Authority have entered into that certain Affordable Housing Agreement dated as of _____ (the "**Affordable Housing Agreement**"), which is incorporated herein by this reference (any capitalized term that is not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Affordable Housing Agreement); and

WHEREAS, pursuant to the Affordable Housing Agreement, the Authority is providing financial assistance to Developer to assist in the acquisition and development of the Property, by providing funds to acquire the Property at a reduced price from the State of California, Department of General Services ("**State**"); and

WHEREAS, the Affordable Housing Agreement contains certain provisions relating to the use of the Property.

NOW, THEREFORE, AUTHORITY AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

1. Maximum Incomes.

a. Developer covenants and agrees for itself, its successors and its assigns and every successor in interest to the Property or any part thereof, that Developer, its successors and assignees shall use the Property exclusively to provide affordable housing for Senior Low and Moderate Income Households, except for those units designated as the management unit(s) for the on-site manager(s) as reasonably determined by the Authority.

b. The maximum incomes of Senior Low and Moderate Income Households shall be determined on the basis of the income limits for extremely low, very low, low- and moderate income households in the Santa Clara MSA, published approximately annually by the California Department of Housing and Community Development ("HCD").

2. Maximum Rents.

a. The maximum rent, including a reasonable utility allowance for utilities and services (excluding telephone), shall not exceed rents that are affordable to Senior Low and Moderate Income Households under California Health and Safety Code section 50053. Affordable rent shall be based on area median income adjusted for family size appropriate to the unit, as determined by the California Department of Housing and Community Development. As used herein, the term "family size appropriate to the unit" shall equal the number of bedrooms in the unit plus one.

b. This requirement shall continue in effect for the Term of this Agreement.

c. In no event shall rents exceed the maximum rent permitted by tax credit regulations or the rules applicable to the use of Senior Low and Moderate Income Housing Fund moneys, whichever is the lowest.

3. No Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, national origin, religion or sex in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

4. Benefit and Term of Covenants. The covenants established in this Agreement and any amendments hereto approved by the Authority and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, the City of Santa Clara, and the State of California, Department of General Services. The requirements of this Agreement shall remain in effect for _____ () years from the issuance of the permanent certificate of occupancy for the Senior Low and Moderate Income Households (the "Term").

5. Enforcement. The Authority, the City of Santa Clara, and the State of California, Department of General Services, are deemed beneficiaries of the terms and provisions of this Agreement and the covenants herein, both for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The Authority and the State of California, Department of General Services, shall have the right, but not the obligation, if the covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

6. Transfers. The covenants and agreements contained herein shall run with the land and not be personal obligations of the Developer. Upon the sale, conveyance or other transfer of the Property approved by the Authority or otherwise permitted under the Affordable Housing Agreement (a "Transfer") and the assumption of the obligations hereunder by a transferee, the Developer's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.

7. Subordination. The covenants and agreements contained herein shall not be subject to subordination unless the funding sources for the construction of the Improvements are required by law to be in a priority position. Should the covenants and agreements contained herein be subordinated, then if said covenants and agreements are terminated by foreclosure or otherwise, and the Property is not used for the Senior Low and Moderate Income Households, then pursuant to that certain Purchase and Sale Agreement dated July 5, 2005 by and between the Authority and the State of California, Department of General Services ("State" or "Department" therein) as amended by that certain First Amendment thereto dated December 13, 2011, as amended by that Agreement to Amend Post Closing Covenants and Modification of Grant Deed, dated as of _____, 2016 (collectively, the "**Purchase Agreement**"), a public record on file in the offices of the Authority, Authority shall pay to the State the Additional Consideration (as defined therein) as if the total number of units subject to such foreclosure or other termination were included within the Market Rate Housing Element.

8. Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the Authority and the Developer have executed this Agreement as of the date first written above.

"AUTHORITY"

THE HOUSING AUTHORITY OF THE CITY OF
SANTA CLARA

By: _____
Rajeev Batra
Interim Executive Director

ATTEST:

By: _____
Rod Diridon, Jr.
Authority Secretary

APPROVED AS TO FORM:

By: _____
Richard E. Nosky, Jr.
Authority General Counsel

NOSSAMAN LLP

By: _____
David L. Kimport
Authority Special Counsel

[Signatures continue on following page.]

"DEVELOPER"

By: _____
Its: _____

By: _____
Its: _____

Exhibit "A"

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 29, 2009, IN BOOK 831 OF MAPS, PAGE(S) 53 AND 54.

APN: 303-17-053

Exhibit "A" to Agreement Containing Covenants

EXHIBIT B

FORM OF MODIFICATION OF GRANT DEED

[Behind this page.]

First American Title Company

ESCROW #: *NCS-826220-SC*

RECORDING REQUESTED BY

State of California – Official Business
Department of General Services

Document entitled to free recordation
Pursuant to Gov't. Code Sec. 6103

WHEN RECORDED MAIL TO:

HOUSING AUTHORITY OF THE
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Executive Director

****This document was electronically submitted
to Santa Clara County for recording****

23550600

Regina Alcomendras
Santa Clara County - Clerk-Recorder
01/04/2017 11:33 AM

Titles: 1 Pages: 11

Fees: \$55.00

Taxes: \$0.00

Total: \$55.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 303-17-053

**STATE OF CALIFORNIA
MODIFICATION OF GRANT DEED
(SENIOR HOUSING SITE)**

The STATE OF CALIFORNIA ("State"), acting by and through the Director of the DEPARTMENT OF GENERAL SERVICES ("DGS"), is the Seller/Grantor and the HOUSING AUTHORITY of the CITY OF SANTA CLARA, a public body, corporate and politic ("Authority") is the Buyer/Grantee under that certain Grant Deed dated as of December 21, 2011, and recorded in the Official Records of the Santa Clara County Recorder on January 5, 2012, as Document No. 21485774 (the "Grant Deed"), wherein the State granted to Authority all its right, title, and interest in and to that certain real property in the City of Santa Clara, County of Santa Clara, State of California ("Property") described as:

PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP,
WHICH MAP WAS FILED IN THE OFFICE OF THE
RECORDER OF THE COUNTY OF SANTA CLARA, STATE
OF CALIFORNIA ON APRIL 29, 2009, IN BOOK 831 OF
MAPS, PAGE(S) 53 AND 54.

APN: 303-17-053

1. Chapter 649 of the Statutes of 2016 ("Legislation") authorizes the Director of DGS to modify the Grant Deed for the purposes set forth in the Legislation.

2. Pursuant to the authority set forth in the Legislation, the State, as Grantor in the Grant Deed, and the Authority, as Grantee in the Grant Deed, hereby agree to modify the Grant Deed as follows:

First American Title Company

ESCROW #: *NCS-826220-SC*

RECORDING REQUESTED BY

State of California – Official Business
Department of General Services

Document entitled to free recordation
Pursuant to Gov't. Code Sec. 6103

WHEN RECORDED MAIL TO:

HOUSING AUTHORITY OF THE
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 303-17-053

**STATE OF CALIFORNIA
MODIFICATION OF GRANT DEED
(SENIOR HOUSING SITE)**

The STATE OF CALIFORNIA ("State"), acting by and through the Director of the DEPARTMENT OF GENERAL SERVICES ("DGS"), is the Seller/Grantor and the HOUSING AUTHORITY of the CITY OF SANTA CLARA, a public body, corporate and politic ("Authority") is the Buyer/Grantee under that certain Grant Deed dated as of December 21, 2011, and recorded in the Official Records of the Santa Clara County Recorder on January 5, 2012, as Document No. 21485774 (the "Grant Deed"), wherein the State granted to Authority all its right, title, and interest in and to that certain real property in the City of Santa Clara, County of Santa Clara, State of California ("Property") described as:

PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP,
WHICH MAP WAS FILED IN THE OFFICE OF THE
RECORDER OF THE COUNTY OF SANTA CLARA, STATE
OF CALIFORNIA ON APRIL 29, 2009, IN BOOK 831 OF
MAPS, PAGE(S) 53 AND 54.

APN: 303-17-053

1. Chapter 649 of the Statutes of 2016 ("Legislation") authorizes the Director of DGS to modify the Grant Deed for the purposes set forth in the Legislation.
2. Pursuant to the authority set forth in the Legislation, the State, as Grantor in the Grant Deed, and the Authority, as Grantee in the Grant Deed, hereby agree to modify the Grant Deed as follows:

- a. The third (3rd) full paragraph beginning on page 1 is deleted in its entirety and replaced by the following:

"This Grant Deed is made pursuant to that certain Purchase and Sale Agreement for the Purchase of Land by and between State and Authority dated July 5, 2005, as amended by that certain First Amendment thereto dated December 13, 2011, and as further amended by that certain Agreement to Amend Post Closing Covenants and Modification of Grant Deed dated for reference purposes as 12-1-16, 2016 (collectively, the "Purchase Agreement").

- b. Paragraphs 1 through 6 are deleted in their entirety and replaced by the following:

"1. In accordance with Chapter 649 of the Statutes of 2016, and California Government Code section § 11011.1 et seq., Authority hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property and each portion thereof, that the Property be used for a master planned community project that is expected to include an open space component of no less than one (1) acre (the "Open Space Element"), residential units at market rate (the "Market-Rate Housing Element") and a minimum of 165 affordable multifamily units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors (the "Affordable Housing Element") for not less than 40 nor more than 55 years. The Affordable Housing Element, Market Rate-Housing Element and the Open Space Element are collectively referred to herein as the "Proposed Master Development". Notwithstanding the foregoing, the Authority may modify the Proposed Master Development as herein described in compliance so long as the modified development plan includes not fewer than 165 affordable units to persons of extremely low, very low, or low or moderate income, which will be age-restricted to seniors, and no less than one (1) acre of open space. Any modification to the Proposed Master Development must comply with the Purchase Agreement and all applicable laws, including, but not limited to, Government Code § 11011.1 et seq., and the provisions of Chapter 649 of the Statutes of 2016.

2. Modification of Proposed Master Development. In the event the Authority modifies the Proposed Master Development such that the Market Rate Housing Element exceeds fifty percent (50%) of the total number of residential units in the resulting project, Authority shall, within thirty (30) calendar days after final approval of the revised Proposed Master Development by the City, pay the State additional compensation (the "Additional Consideration") equal to an amount determined by multiplying the percentage of the total number of residential units at market rate that exceeds fifty percent (50%) of the total number of all residential units by FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00) [For example, if the total

number of residential units at market rate in the revised Proposed Master Development is sixty percent (60%) of the total number of all residential units, then the Authority would pay ten percent (10%) of FOUR MILLION FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,050,000.00) which equals FOUR HUNDRED FIVE THOUSAND AND NO/100THS DOLLARS (\$405,000.00)]. In the event the final approved Proposed Master Development includes a Market Rate Housing Element with less than fifty percent (50%) of residential units at market rate, the Authority shall not be entitled to any refund of previously paid Consideration.

3. In accordance with Chapter 649 of the Statutes of 2016, and California Government Code § 11011.1 et seq., Authority including its successors, its assigns, and every successor in interest to the Property and each portion thereof, shall commence development of the Proposed Master Development on or before January 5, 2018 (the "**Commencement of Development Date**"). If development of the Proposed Master Development has not commenced on or before the Commencement of Development Date, the Property shall revert to the State for disposal pursuant to the authority in this Paragraph 2 or as otherwise authorized by law. Commencement of development shall be deemed satisfied upon Authority or its designee filing a development application for the Proposed Master Development with the requisite governmental authority(ies) having jurisdiction over the development of the Seniors' Property.

4. In accordance with Chapter 649 of the Statutes of 2016, and California Government Code § 11011.1 et seq., the Property shall revert to the State for disposal pursuant to the authority in this Paragraph 3 or as otherwise authorized by law if Authority including its successors, its assigns, and every successor in interest to the Property and each portion thereof, unless otherwise released by the State, fails to complete development and construction of the Affordable Housing Element and the Open Space Element as prescribed in Paragraph 1 above on or before January 5, 2023 ("**Outside Completion Date**"). Completion of development and construction of the Affordable Housing Element and the Open Space Element shall be deemed satisfied upon issuance of certificates of occupancy, or equivalent, for the Affordable Housing Element and the Open Space Element by the requisite governmental authority(ies) having jurisdiction over the development of the Seniors' Property.

5. All obligations of "Authority" under this Grant Deed (and all of the terms, covenants and conditions of this Grant Deed) shall be binding upon Authority, its successors and assigns and every successor in interest of the Property or any portion thereof or any interest therein, for the benefit and in favor of the State, its successors and assigns. All rights of

“Authority” under this Grant Deed shall inure to the benefit of Authority and its permitted successors and assigns.

6. This Grant Deed shall not merge with any other agreement between the State and the Authority.


7. Breach of any of the covenants, conditions, restrictions, or reservations contained in this Grant Deed shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, whether or not said mortgage or deed of trust is subordinated to this Grant Deed, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Grant Deed shall be binding and effective against the holder of such mortgage or deed of trust and any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee’s sale, or otherwise.”

3. In all other respects, the parties hereto reaffirm the terms of the Grant Deed, dated as of December 21, 2011, and recorded in the Official Records of the Santa Clara County Recorder on January 5, 2012, as Document No. 21485774.

IN WITNESS WHEREOF, the State and Authority have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized as of the dates shown below.

[Signatures begin on following page.]

"State"
STATE OF CALIFORNIA
Department of General Services
Real Estate Services Division

By: 
Jim Martone, Chief
Asset Management Branch
Department of General Services

[Signatures continue on following page.]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS
COUNTY OF Yolo)

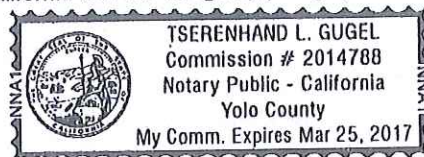
On Dec 23, 2016 before me, Tserenhand L. Gugel, Notary Public, personally appeared
Tim Martone

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tserenhand L. Gugel



This area for official notarial seal.

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER(S) TITLE(S)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____

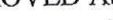
DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

By: Rajeev Batra
Rajeev Batra, Interim Executive Director
Housing Authority

By: Bernadette Rebusa
for Rod Diridon, Jr., Secretary
Housing Authority

APPROVED AS TO FORM:

By: 
Richard E. Nosky, Jr., General Counsel
Housing Authority

6

"Authority"
SANTA CLARA HOUSING AUTHORITY
a public body, corporate and politic,
organized and existing in the County of Santa Clara,
under and by virtue of the laws of the State of California

By: **SIGNED IN COUNTERPART**
Rajeev Batra, Interim Executive Director
Housing Authority

ATTEST

SIGNED IN COUNTERPART
By: _____
Rod Diridon, Jr., Secretary
Housing Authority

APPROVED AS TO FORM:

By: **SIGNED IN COUNTERPART**
Richard E. Nosky, Jr., General Counsel
Housing Authority

By: 
David L. Kimport
NOSSAMAN LLP
Authority Special Counsel

California All-Purpose Acknowledgment

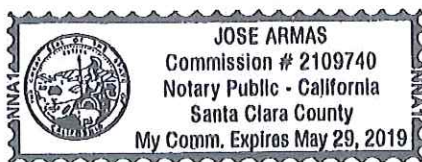
CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss

On December 20, 2016, before me, Jose Armas, a Notary Public, personally appeared Rajeev Batra who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Jose Armas
SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
State of California Modification of Grant Deed (Senior Housing Site)



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the State of California Modification of Grant Deed dated the 20 day of December, 2016, from the **State of California** (Grantor) acting by and through the **Director of the Department of General Services (DGS)**, to the City of Santa Clara Housing Authority, California, a public body, corporate and politic organization and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (Authority/Grantee), is hereby accepted by the undersigned officer on the behalf of the City of Santa Clara Housing Authority pursuant to authority conferred by Resolution No. 16-1 (HA) of the City of Santa Clara Housing Authority adopted on the 13th day of December 2016. The Authority, as Grantee, consents to recordation by its duly authorized officer, the Authority Secretary of the City of Santa Clara.

RE: APN 303-17-153

DATED: This 20th day of December, 2016

By: Rajeev Batra
Rajeev Batra
Interim Executive Director

ATTEST

By: Bernadette A. Sousa
for Rod Diridon, Jr.
Authority Secretary

APPROVED AS TO FORM:

By: Richard E. Nosky, Jr.
Richard E. Nosky, Jr.
Authority General Counsel

California All-Purpose Acknowledgment

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

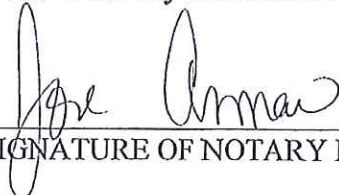
STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } ss

On December 22, 2016, before me, Jose Armas, a Notary Public, personally appeared Rajeev Batra who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Certificate of Acceptance
State of California Modification of Grant Deed